STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DESHAWN LAYTON,

Defendant-Appellant.

UNPUBLISHED
April 30, 1999

No. 205877
Muskegon Circuit Court
LC No. 97-140233 FC

Before: McDonald, P.J., and Sawyer and Collins, JJ.

PER CURIAM.

Defendant was convicted by a jury of armed robbery, MCL 750.529; MSA 28.797, and sentenced as a third habitual offender, MCL 769.11; MSA 28.1083, to a term of fifteen to thirty years' imprisonment. Defendant now appeals and we affirm.

Defendant first contends that the trial court erred by not allowing evidence that the sole witness who identified him as one of the robbers was developmentally disabled. We disagree. Upon careful examination, the trial court found no indication that the witness' purported developmental disability affected her competence as a witness. Furthermore, defendant never presented any expert testimony indicating that the witness' relatively low IQ or her status as an alleged developmentally disabled person, by itself, affected her ability to testify. Under the circumstances, we agree with the trial court that defendant's proposed line of questioning was irrelevant. The trial court did not commit clear error in its findings of fact or abuse its discretion in deciding to exclude defendant's proposed evidence. *People v Barrera*, 451 Mich 261, 269; 547 NW2d 280 (1996).

Defendant next argues that he was denied his state constitutional right to counsel when police officers returned him to the scene of the robbery approximately one hour after the crime was committed to enable witnesses to identify him. This Court will not disturb a trial court's ruling at a suppression hearing unless that ruling is found to be clearly erroneous. *People v Vasquez (On Remand)*, 227 Mich App 108, 110; 575 NW2d 294 (1997).

This issue is controlled by our recent holding in *People v Winters*, 225 Mich App 718, 727-728; 571 NW2d 764 (1997), where we stated:

> [I]t is proper and does not offend the [*People v Anderson*, 389 Mich 155; 205 NW2d 461 (1973)] requirements for the police to promptly conduct an on-the-scene identification. . . . Such on-the-scene confrontations are reasonable, indeed indispensable, police practices because they permit the police to immediately decide whether there is a reasonable likelihood that the suspect is connected with the crime and subject to arrest, or merely an unfortunate victim of circumstance.

The trial court therefore correctly denied defendant's motion to suppress.

Defendant also claims that the evidence produced at trial was insufficient to support his conviction of armed robbery. When reviewing the sufficiency of the evidence, this Court views the evidence in the light most favorable to the prosecution and determines whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). In this case, eyewitness testimony identifying defendant as the perpetrator, together with other circumstantial evidence of defendant's guilt, viewed most favorably to the prosecution, was sufficient to enable a rational trier of fact to conclude beyond a reasonable doubt that defendant committed the charged offense.

As his final contention of error, defendant maintains that his sentence is disproportionate. Appellate "review of an habitual offender sentence is limited to considering whether the sentence violates the principle of proportionality set forth in *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990), without reference to the guidelines." *People v Gatewood (On Remand)*, 216 Mich App 559, 560; 550 NW2d 265 (1996). Our examination of defendant's sentence in light of the crime for which he was convicted and his prior criminal record convinces us that his sentence is proportional to the offense and the offender.

Affirmed.

/s/ Gary R. McDonald
/s/ David H. Sawyer
/s/ Jeffrey G. Collins